

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DIRECTV, INC., a California
corporation,

Plaintiff,

v.

LUKE GARZA,

Defendant.

NO. CV-05-94-LRS

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT is Defendant Luke Garza's Motion for Summary Judgment (Ct. Rec. 7). Defendant Garza moves for summary dismissal of Plaintiff Directv's legal claims based on the applicable statutes of limitations and Plaintiff's equitable claims based on the doctrine of laches. For the reasons that follow, Defendant's motion is DENIED.

I. FACTUAL BACKGROUND

The parties at this time do not dispute the material facts of this matter. Statement of Facts in Opposition at 1.

Directv, Inc. is the nation's leading direct broadcast satellite system, delivering digital entertainment and informational programming to approximately 11 million homes and businesses equipped with Directv receiving equipment. To provide security for and prevent unauthorized viewing of its television programming, Directv encrypts, or electronically scrambles, its satellite

1 transmissions.

2 On or about December 1, 2001, Directv, with the assistance of
3 the United States Marshals, executed Writs of Seizure upon The
4 Computer Shanty, an internet seller of devices ("Pirate Access
5 Devices") primarily designed for the unauthorized interception of
6 Directv's Satellite Programming. In the "raid," Directv obtained
7 various business records, including orders, invoices, electronic
8 communications, shipping documentation, purchase receipts, credit
9 card receipts and customer lists.

10 Relying on those records, Directv filed suit against Lucas
11 Garza, Jr., Defendant Garza's father, in the United States District
12 Court for the Eastern District of Washington on November 23, 2003,
13 alleging that Lucas Garza, Jr. had purchased, used, and distributed
14 Pirate Access Devices in violation of federal and state law.

15 During settlement attempts, the former attorney for Lucas
16 Garza, Jr. informed Directv on or about April 13, 2003 that "Lucas
17 Garza, Jr. was the father of Luke Garza" and claimed that Lucas
18 Garza, Jr. was not involved in signal piracy.

19 On August 27, 2004, counsel for Lucas Garza, Jr. sent an
20 attorney proffer letter to counsel for Plaintiff Directv informing
21 the Plaintiff that Lucas Garza, Jr. would testify that he assumed
22 his son, Defendant Luke Garza, used his credit card to purchase the
23 devices.

24 On October 19, 2004, Plaintiff Directv propounded its first
25 sets of written discovery requests upon Lucas Garza, Jr.

26 On March 9, 2005, Defendant Garza executed an affidavit
27 attesting to using his father's credit card to purchase smart card
28 programming products from The Computer Shanty.

1 On March 24, 2005, Directv and Lucas Garza, Jr. stipulated to
2 a dismissal with prejudice of that action. The District Court
3 ordered the dismissal with prejudice the same day.

4 Directv filed this action against Defendant Garza in the United
5 States District Court for the Eastern District of Washington on
6 April 1, 2005.

7 II. SUMMARY JUDGMENT STANDARD

8 Summary judgment is appropriate if there is no genuine issue as
9 to any material fact, and the moving party is entitled to a judgment
10 as a matter of law. Fed.R.Civ.P. 56(c). The moving party has the
11 initial burden of demonstrating that summary judgment is proper.
12 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26
13 L.Ed.2d 142 (1970). The moving party must identify the pleadings,
14 depositions, affidavits, or other evidence which the moving party
15 "believes demonstrates the absence of a genuine issue of material
16 fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548,
17 91 L.Ed.2d 265 (1986). "A material issue of fact is one that
18 affects the outcome of the litigation and requires a trial to
19 resolve the parties' differing versions of the truth." *SEC v.*
20 *Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir.1982). The burden then
21 shifts to the nonmoving party to establish, beyond the pleadings,
22 that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324,
23 106 S.Ct. 2548. Thus, to successfully rebut a properly supported
24 motion for summary judgment, the nonmoving party "must point to some
25 facts in the record that demonstrate a genuine issue of material
26 fact and, with all reasonable inferences made in the plaintiff[]'s
27 favor, could convince a reasonable jury to find for the
28 plaintiff[]." *Reese v. Jefferson School Dist. No. 14J*, 208 F.3d 736

(9th Cir.2000) (citing Fed.R.Civ.P. 56; *Celotex*, 477 U.S. at 323, 106 S.Ct. 2548).

III. STATUTE OF LIMITATIONS

Defendant Garza contends that he is entitled to summary judgment dismissing Plaintiff Directv's legal claims as being time-barred by the relevant statutes of limitations. Directv asserts that all of its claims were timely filed within the applicable statutes of limitations. Memo in Opposition at 5.

A. Count V, 18 U.S.C. § 2511(1)(a)

Defendant Garza seeks summary judgment dismissing Directv's claim under the Federal Wiretap Act ("Wiretap Act"), 18 U.S.C. § 2511(1)(a). In Count V of its Complaint, Directv alleges that Defendant Garza violated the Wiretap Act by intentionally intercepting Directv satellite transmissions and/or endeavoring to intercept such transmissions. Complaint at 13, ¶ 53. A civil action for damages under the Wiretap Act is created by 18 U.S.C. § 2520(a), which provides that "[a]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation..." As a result of Defendant Garza's alleged violation, Directv asserts that it was deprived of subscription and pay-per-view revenues as well as suffering security compromises and trade secret infringement. Complaint at 14, ¶ 54.

1. *The Applicable Time Period*

18 U.S.C. § 2520(e) expressly provides a two-year limitation period for claims brought under the Wiretap Act. Moreover, the parties do not dispute the application of a two-year statute of

1 limitations to claims brought for violations of Section 2511. Memo
2 in Opposition at 5.

3 2. *Accrual Date*

4 A statute of limitations period normally commences when the
5 cause of action accrues or the injury occurs. *Volk, L.A. v. D.A.*
6 *Davidson & Co.*, 816 F.2d 1406, 1412 (9th Cir.1987). In accordance
7 with this general standard, the statute of limitations period for
8 Section 2520(e), by the plain language of the statute, begins to run
9 once the "claimant first has a reasonable opportunity to discover
10 the violation." 18 U.S.C. § 2520(e). The claimant need not have
11 actual knowledge of the violation before the commencement of the
12 limitations period. *Davis v. Zirchenback*, 149 F.3d 614, 618 (7th
13 Cir.1998). "There is no need that someone actually 'discover' or be
14 aware of the violation." *Sparshott v. Feld Entertainment, Inc.*, 311
15 F.3d 425, 430 (D.C.Cir.2003). In fact, a plaintiff "need not even
16 know the perpetrators of an illicit wiretapping if knowledge of the
17 wiretapping itself would lead to discovery of the perpetrators."
18 *Andes v. Knox*, 905 F.2d 188, 189 (8th Cir.1990); *Directv, Inc. v.*
19 *Thomas*, 329 F.Supp.2d 949, 952 (E.D.Mich.2004) (holding that a
20 wiretap plaintiff need not know the identity of the specific
21 violator who caused the plaintiff's wiretap injury in order for the
22 cause of action to accrue). Thus, whether the limitations period
23 has commenced depends upon whether the claimant has had "a
24 reasonable opportunity to discover the wiretapping." *Sparshott*, 311
25 F.3d at 430.

26 Defendant Garza asserts that Directv's § 2520(a) claim filed on
27 April 1, 2005 should be time-barred because Defendant contends that
28 the statute of limitations period began to run on December 1, 2001,

1 the date of the raids. Reply at 5. Defendant Garza argues that the
2 raids provided Directv with a reasonable opportunity to discover the
3 alleged violations, and thus should serve as the accrual date for
4 the limitations period. *Id.* Defendant Garza argues that since
5 Directv was in possession of records after the raids, Directv was
6 "armed with notice that Defendant Garza may have had possible
7 involvement with the purchase of the devices." Reply at 5.
8 Defendant Garza asserts that since Directv was on notice of the
9 alleged violations as of December 1, 2001, the fact that Directv did
10 not know of the identity of the defendant until sometime later is
11 irrelevant for purposes of the limitations period. Reply at 2.
12 Defendant Garza contends that had Directv been diligent in its
13 investigation against Lucas Garza, Jr. (Defendant Garza's father),
14 Directv could have named or joined Defendant Garza in the lawsuit
15 against his father. Reply at 3. Nevertheless, because Directv
16 "slept on whatever rights it may have had" after being put on notice
17 from the December 1, 2001 raids, Defendant Garza contends that
18 Directv is now time-barred from bringing a suit because the two-year
19 period has passed. Reply at 7.

20 Conversely, Directv asserts that its § 2520(a) claim was timely
21 filed because the statute of limitations did not begin to run on its
22 claims until March 9, 2005, or alternatively April 13, 2003.
23 Directv claims March 9, 2005 the proper accrual date because this
24 was the "earliest opportunity for Directv to discover Luke Garza's
25 violation." Memo in Opposition at 7. On March 9, Defendant Garza
26 "submitted an affidavit, in connection with the prior lawsuit
27 against his father, stating that he had purchased the Pirate Access
28 Devices." Memo in Opposition at 6. Directv argues that it was not

1 until the filing of the affidavit that it discovered its cause of
2 action against Defendant Garza. *Id.* Directv further asserts that
3 while the March 9, 2005 is the proper accrual date, the court could
4 also find April 13, 2003 to be the accrual date without time-barring
5 Directv's claims. On this date, Directv learned that Lucas Garza,
6 Jr. was the father of Defendant Garza and that Defendant's father
7 was not involved in the illegal purchases. Memo in Opposition at 8.
8 While providing insufficient notice, this date, according to
9 Directv, could still be deemed the accrual date without time-barring
10 their claim. Memo in Opposition at 7. In any event, Directv
11 contends that it had no reason to know of Defendant Garza's
12 violation on December 1, 2001 because Directv's belief that Lucas
13 Garza, Jr. was engaged in satellite piracy does not provide Directv
14 with a reasonable opportunity to discover its cause of action
15 against the son, Defendant Garza. Memo in Opposition at 9. Thus, by
16 deeming either March 9, 2005 or April 13, 2003 to be the proper
17 accrual dates and not December 1, 2001, Directv contends that its
18 claim filed on April 1, 2005 is within the two-year limitations
19 period.

20 Directv's interpretation of what constitutes a "reasonable
21 opportunity to discover the alleged violations" is contrary to Ninth
22 Circuit law. A plaintiff need not have knowledge of the identity of
23 the alleged wrongdoer at the commencement of the limitations period.
24 *Dyniewicz v. United States*, 742 F.2d 484, 486 (9th Cir.1984); accord
25 *Bristol-Myers Squibb Co. v. Superior Court*, 32 Cal.App.4th 959, 965,
26 38 Cal.Rptr.2d 298, 303 (Cal.Ct.App.1995) (ignorance of identity of
27 alleged wrongdoer did not affect accrual of claim upon plaintiff's
28 knowledge of injury and of facts creating, or which should have

1 created, a suspicion of negligence by another). The relevant
2 discoveries that must be made prior to the accrual of a cause of
3 action are the injury and the immediate result of that injury. See
4 *Id.* Furthermore, Directv's position runs contrary to an important
5 purpose of statutes of limitations:

6 [T]he limiting period provides plaintiffs with a period
7 in which to investigate a perceived injury and
8 investigate potential claims. A plaintiff must take
9 action on such claims, *including investigating the*
10 *identity of potential defendants*, before the expiration
11 of the statutory period.

12 *Strand v. General Electric Co.*, 945 F.Supp. 1334, 1340
13 (D.Hi.1996) (emphasis added).

14 Moreover, case law from other circuits addressing analogous
15 claims under § 2520(a) have generally not considered knowledge of
16 the identity of the violator to be a prerequisite to the
17 commencement of the limitations period. See *Andes*, 905 F.2d at 189
18 ("the cause of action accrues when the claimant has a reasonable
19 opportunity to discover the violation, not when [it] discovers the
20 true identity of the violator or all of the violators"); *Sparshott*,
21 311 F.3d at 430 ("a plaintiff need not even know the perpetrators of
22 [the illicit activity] if knowledge of [it] would lead to discovery
23 of the perpetrators"); *Newcastle County v. Halliburton NUS Corp.*,
24 111 F.3d 1116, 1124 (3rd Cir. 1997) ("a claim accrues upon awareness
25 of actual injury, not upon awareness that the injury constitutes a
26 legal wrong).

27 In support of its contention that the limitations period does
28 not begin to run until claimants discover the identity of the
violators, Directv cites *Directv v. Thomas*, 329 F.Supp.2d 949
(E.D.Mich. 2004). However, Direct misreads the rule expounded in
Thomas. In *Thomas*, Directv executed writs of seizure against a

1 shipping facility to obtain sales records, shipping records, and
2 credit card receipts identifying numerous pirates of its
3 programming. 329 F.Supp.2d at 951. The records Directv obtained in
4 the seizure, however, did not include the documented purchases made
5 by defendants Thomas and Suggs. *Id.* Directv only learned of the
6 purchases made by Thomas and Suggs once the additional records were
7 voluntarily disclosed several months after the initial raid. *Id.*
8 Given the fact that Directv did not learn of this specific violation
9 on the day of the raid, the *Thomas* court found the accrual date to
10 be the day Directv received the records pertaining to Thomas and
11 Suggs, not the day of the raid. In forming this conclusion, the
12 court held that:

13 While it is true that, for 2520(e) purposes, a wiretap
14 plaintiff need not know the identity of the specific
15 violator who caused the plaintiff's wiretap injury, it is
16 also true that § 2520(e)'s two-year limitations period
17 does not begin to run until the plaintiff has a
18 reasonable opportunity to discover 'the violation' that
is the subject matter of the lawsuit...general awareness
that widespread satellite piracy was ongoing is not
enough to give rise to a cause of action for a specific,
individual violation of the Wiretap Act and thereby
initiate the limitations period.

19 329 F.Supp.2d at 953-4 (citations omitted)(emphasis added). The
20 *Thomas* court concluded that the records seized on the date of the
21 initial raid did not provide Directv with notice, not because
22 Directv lacked any information about the violator, but rather
23 because it lacked any information about the actual violation. *Id.*
24 Thus, neither *Thomas* nor any of the other aforementioned case law
25 support Directv's contention that a claimant must discover the
26 identity of the wrongdoer prior to the commencement of the
27 limitations period.

28 That said, the plain language of the Wiretap Act explicitly

1 incorporates what is known as the "discovery rule" in the applicable
2 federal statute of limitations. *Directv v. Rodkey*, 369 F.Supp.2d
3 587, 598 (W.D.Pa.2000) (citing 54 C.J.S. Limitations of Actions § 87
4 (1987)) (quoted in *In re Cases Filed by Directv, Inc.*, 344 F.Supp.2d
5 647, 654 (D.Az.2004)). Under the discovery rule, "the limitation
6 period begins to run when the claimant discovers or in the exercise
7 of reasonable diligence should have discovered the acts constituting
8 the alleged violation." *Id.* Thus, the discovery rule tolls the
9 commencement of the limitations period "until the time that the
10 plaintiff knows or reasonably should know" both: "(1) that he has
11 been injured, and (2) that his injury has been caused by another
12 party's conduct." *Id.* (quoting *DiCicco v. Willow Grove Bank*, 308
13 F.Supp.2d 528, 534 (E.D.Pa.2004) (quoting *Lang v. Cont'l Assur. Co.*,
14 54 Fed.Appx. 72, 74 (3rd Cir.2002) (citing *Cappelli v. York Operating*
15 *Co., Inc.*, 711 A.2d 481, 484-85 (Pa.Super.1998)). Therefore, having
16 deemed the discovery rule applicable, the proper accrual date for
17 the statute of limitations is the date upon which Directv "knew or
18 reasonably should have known that it had been injured, and that its
19 injury had been caused by another party's conduct." *Id.*

20 Defendant Garza contends that Directv knew or should have known
21 that it had been injured as of December 1, 2001 and that its injury
22 had been caused by another party. Memo in Support at 14-15. The
23 court agrees with Defendant that Directv had a reasonable
24 opportunity to discover Defendant Garza's purchases of devices on
25 December 1, 2001, the date on which Directv executed the writs of
26 seizure against the Computer Shanty. Opposition p.6. Nevertheless,
27 the gravamen of a plaintiff's claim under 18 U.S.C. § 2511(1)(a) is
28 a defendant's "alleged interception and use of plaintiff's satellite

1 programming, not defendant's purchase of unlawful devices." *Rodkey*,
2 369 F.Supp.2d at 600 (citing *In re Cases Filed by Directv, Inc.*, 344
3 F.Supp.2d at 655).

4 Given the plain language of 18 U.S.C. § 2520(e), the two-year
5 limitations period begins to run when the plaintiff has a reasonable
6 opportunity to discover "the violation," or the injury that forms
7 the subject matter of the claim. *In re Cases Filed by Directv, Inc.*,
8 344 F.Supp.2d at 655 (citing 18 U.S.C. § 2520(e)). Therefore, while
9 Directv need not have known of Defendant Garza's identity on the
10 accrual date, it must have been provided with a reasonable
11 opportunity to discover the subject matter of its claim. Under 18
12 U.S.C. § 2511(1)(a), the subject matter of plaintiff's claim is not
13 defendant's purchases of devices, but rather defendant's "alleged
14 unauthorized interception and use of Directv's satellite
15 programming." *Id.* Thus, December 1, 2001, the date of execution of
16 the writs of seizure, does not mark the start of the running of the
17 statute of limitations. Notice of purchase does not provide Directv
18 with a reasonable opportunity to discover the violation under 18
19 U.S.C. § 2511(1)(a), which is the actual interception of Directv's
20 satellite programming. See *Rodkey*, 369 F.Supp.2d at 600.

21 "In determining when an action has accrued under a discovery-
22 based statute of limitations, '[t]he question of when [the alleged
23 wrongdoing] was or should have been discovered is a question of
24 fact.'" *Nevada Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th
25 Cir. 1992) (quoting *Mosesian v. Peat, Marwick, Mitchell & Co.*, 727
26 F.2d 873, 877 (9th Cir. 1984), cert. denied, 469 U.S. 932, 105 S.Ct.
27 329, 83 L.Ed.2d 265 (1984). When or whether Plaintiff Directv had
28 a reasonable opportunity to discover Defendant Garza's alleged

1 unauthorized interception and use of the satellite programming has
2 not been developed in the record. Therefore, Defendant's motion for
3 summary judgment regarding claims under 18 U.S.C. § 2511(1)(a) is
4 denied.

5 **B. Counts I and II, 47 U.S.C. § 605(a) and 605(e)(4)**

6 Defendant Garza also seeks summary judgment dismissing
7 Directv's claims under subsections 605(a) and 605(e)(4) of the
8 Federal Communications Act ("FCA"). In Count I of its Complaint,
9 Directv seeks relief pursuant to subsection 605(a), alleging that
10 Defendant Garza violated said subsection by assisting in the
11 "unauthorized reception and use of Directv's satellite transmissions
12 of television programming by persons not authorized to receive such
13 transmissions." Complaint at 9, ¶ 33. In Count II of its Complaint,
14 Directv alleges that Defendant Garza violated subsection 605(e)(4)
15 of the Federal Communications Act by:

16 [M]anufacturing, assembling, modifying, importing,
17 exporting, distributing, and/or selling illegal satellite
18 signal theft devices without authorization, knowing or
19 having reason to know that such devices are primarily of
20 assistance in the unauthorized decryption of Directv's
satellite transmission of television programming, or are
intended by defendant to assist other persons in the
unauthorized reception and use of Directv's satellite
transmissions of television programming...

21 Complaint at 10, ¶ 38. Subsection 605(a) provides that "no person
22 not being authorized by the sender shall intercept any radio
23 communication and divulge or publish the existence, contents,
24 substance, purport, effect, or meaning of such intercepted
25 communication to any person." Subsection 605(e)(4) provides in
26 relevant part:

27 [A]ny person who manufacturers, assembles, modifies,
28 imports, exports, sells, or distributes any electronic,
mechanical, or other device or equipment, knowing or
having reason to know that the device or equipment is

1 primarily of assistance in the unauthorized decryption of
2 satellite cable programming, or direct-to-home satellite
3 services, or is intended for any other activity
prohibited by subsection(a) of this section, shall be
fined...

4 1. *The Applicable Time Period*

5 The FCA does not set forth a specific statute of limitations
6 for interception of cable and wire communications. *Prostar v.*
7 *Massachi*, 239 F.3d 669, 671 (5th Cir.2001). Nevertheless, where a
8 federal statutory provision fails to provide a limitations period,
9 the court generally borrows the limitations period from the most
10 closely analogous state statute, *North Star Steel Co. v. Thomas*, 515
11 U.S. 29, 34, 115 S.Ct. 1927, 132 L.Ed.2d 27 (1995), or from an
12 analogous federal statute should such an adoption be deemed more
13 appropriate by the court. *DelCostello v. Teamsters*, 462 U.S. 151,
14 171-172 (1983); *Reed v. United Transp. Union*, 488 U.S. 319, 324
15 (1989); *Lampf, Pleva, Lipkind, Prupis & Petigrew v. Gilbertson*, 501
16 U.S. 350, 355 (1991).

17 There is no dispute between the parties over what limitations
18 period should be adopted for claims under subsections 605(a) and
19 605(e)(4). Both parties agree that the two-year statute of
20 limitations contained in section 2520(e) of the Wiretap Act should
21 be adopted for the FCA. Memo in Support at 4; Memo in Opposition at
22 5.

23 2. *Accrual Date*

24 The Ninth Circuit has ruled that the statute of limitations
25 period for Section 605 of the FCA begins to run once the "aggrieved
26 person discovers or, by the exercise of due diligence could have
27 discovered, the basis of the cause of action." *Pavlak v. Church*, 727
28 F.2d 1425, 1428 (9th Cir.1984). Directv's claims in Counts I and II

1 are based upon Defendant Garza's unauthorized reception of satellite
2 signals and Defendant Garza's knowing manufacture, assembly,
3 modification, sale or distribution of devices used primarily in
4 assisting the unauthorized decryption of Directv's satellite
5 transmissions, respectively. Complaint at 9-11. The fact that
6 Directv was aware as of December 1, 2001 that these potentially
7 offending devices had been *purchased* does not alone provide Directv
8 with a reasonable opportunity to discover the basis of its causes of
9 action under 47 U.S.C. § 605(a) and (e)(4). *See In re Cases Filed by*
10 *Directv, Inc.*, 344 F.Supp.2d at 662. Knowledge of the mere
11 *possession* of the devices did not constitute notice of violations
12 under sections 605(a) and 605(e)(4).

13 The issue of when Directv discovered, or by the exercise of due
14 diligence could have discovered, the basis of its cause of action
15 under 47 U.S.C. § 605(a) and (e)(4) presents questions of fact which
16 at this time cannot be determined by the Court on Defendant's motion
17 for summary judgment. Therefore, Defendant's motion for summary
18 judgment for claims under 47 U.S.C. § 605(a) and (e)(4) are denied.

19 **C. Counts III and IV, 17 U.S.C. § 1201(a)(2) and 1201(b)(1)**

20 Defendant Garza also seeks summary judgment dismissing
21 Directv's claims under subsections 1201(a)(2) and (b)(1) of the
22 Digital Millennium Act ("DMA"). In Counts III and IV of its
23 Complaint, Directv seeks relief pursuant to subsections 1201(a)(2)
24 and (b)(1), alleging that Defendant Garza violated said subsections
25 by engaging in the business of "manufacturing, importing, exporting,
26 offering to the public, providing and/or trafficking in illegal
27 satellite signal theft devices." Complaint at 11, ¶ 43.

28 **1. The Applicable Time Period**

1 17 U.S.C. § 507(b) expressly provides a three-year limitation
2 period for civil actions brought under the DMA. 17 U.S.C. § 507(b);
3 *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 480 (9th Cir.1994).
4 Moreover, the parties do not dispute the application of a three-year
5 statute of limitations to claims brought for violations of Sections
6 1201(a)(2) or 1201(b)(1). Memo in Opposition at 5.

7 2. *Accrual Date*

8 The Ninth Circuit has ruled that "a cause of action [under the
9 DMA] accrues when one has knowledge of a violation or is chargeable
10 with such knowledge." *Roley*, 19 F.3d at 481; accord *Polar Bear*
11 *Prods. v. Timex Corp.*, 384 F.3d 700, 707 n.4 (9th Cir.2004).
12 Directv's claims in Counts III and IV are based on Defendant Garza's
13 engagement in the purposeful circumvention of Directv's encryption
14 and technological measures conditioning access. Complaint at 11-13.
15 Therefore, since the gravamen of Plaintiff's causes of action under
16 17 U.S.C. 1201(a)(2) and (b)(2) is not *mere possession* of the
17 devices, the knowledge that Directv gained from the writs of seizure
18 against the Computer Shanty on December 1, 2001 does not constitute
19 notice of a DMA violation. Accordingly, precisely when Directv had
20 or should have had knowledge of a violation under 17 U.S.C. §
21 1201(a)(1) and (b)(2) presents a question of fact which at this time
22 cannot be determined by the Court on Defendant's motion for summary
23 judgment. Therefore, Defendant's motion for summary judgment for
24 claims under DMA are denied.

25 **D. Counts VI, VII, VIII, and IX**

26 Defendant Garza also seeks summary judgment dismissing
27 Directv's common law claims of unjust enrichment, tortious
28 interference with contractual relations, tortious interference with

1 prospective contractual relations, and unfair competition.

2 In Count VI, Directv alleges that Defendant Garza has been
3 unjustly enriched by usurping "trade secrets, proprietary
4 information, revenues, and other property rights belonging to
5 Directv for the purpose of enhancing the commercial value of
6 defendant's goods." Complaint at 14. Washington courts have defined
7 unjust enrichment as:

8 [A] general principle that one person should not be
9 permitted unjustly to enrich himself at the expense of
10 another, but should be required to make restitution of or
11 for property or benefits received, retained or
12 appropriated, where it is just and equitable that such
13 restitution be made, and where such action involves no
14 violation or frustration of law or opposition to public
15 policy, either directly or indirectly.

16 *Tulalip Shores, Inc. v. Mortland*, 9 Wash.App. 271, 274-75, 511 P.2d
17 1402, 1404 (1973)(citing 66 Am.Jur.2d Restitution and Implied
18 Contracts § 3 (1973)); accord *Lloyd et al. v. Ridgefield Lumber*
19 *Ass'n Inc., et al.*, 38 Wash.2d 723, 735-36, 231 P.2d 613, 620
20 (1951); *Hardgrove v. Bowman*, 10 Wash.2d 136, 137-38, 116 P.2d 336,
21 337 (1941).

22 In Count VII, Directv alleges that Defendant tortiously
23 interfered with Directv's contractual relations by "inducing,
24 procuring, conspiring, aiding and abetting an as yet undetermined
25 number of subscribers not to perform their respective contracts with
26 Directv, thereby causing the breach or termination thereof, and
27 resulting in damage to Directv." Complaint at 15. In Count VIII,
28 Directv alleges that Defendant tortiously interfered with
prospective contractual relations by "providing illegal satellite
signal theft devices to an as yet undetermined number of subscribers
and prospective subscribers, thereby hindering Directv from
acquiring each such prospective relation and resulting in damage to

1 Directv." Complaint at 16. In order for an action to constitute
2 tortious interference with contractual relations or business
3 expectancy in Washington courts, five essential elements must be
4 present:

- 5 1. The existence of a valid contractual relationship or
business expectancy;
- 6 2. That defendants had knowledge of that relationship;
- 7 3. An intentional interference inducing or causing a
breach or termination of the relationship or
expectancy;
- 8 4. That defendants interfered for an improper purpose
or used improper means; and
- 9 5. Resultant damages.

10 *Commodore v. University Mechanical Contractors, Inc.*, 120 Wash.2d
11 120, 137, 839 P.2d 314, 323 (1992) (citing *Sintra, Inc. v. Seattle*,
12 119 Wash.2d 1, 28, 829 P.2d 765 (1992)).

13 In Count IX, Directv seeks under statutory and common law a
14 preliminary and permanent injunction restraining and enjoining
15 Defendant Garza "from engaging in acts of unfair competition in
16 connection with the sale of illegal satellite signal devices," as
17 well as "an accounting of defendant's profits for all goods sold
18 through defendant's acts of unfair competition..." Complaint at 17.
19 Unfair competition amongst competitors is prohibited in Washington
20 state under the Consumer Protection Act, which states that "[u]nfair
21 methods of competition and unfair or deceptive acts or practices in
22 the conduct of any trade or commerce are hereby declared unlawful.
23 RCW 19.86.020. This provision of the Washington Consumer Protection
24 Act "applies only to acts against competitors." *State v. Black*, 100
25 Wash.2d 793, 803, 676 P.2d 963 (1984); *Seaboard Surety Co. v. Ralph*
26 *Williams' Northwest Chrysler Plymouth, Inc.*, 81 Wash.2d 740, 742-43,
27 504 P.2d 1139 (1973). Prior to the implementation of RCW 19.86.020,
28 a "common law action for unfair competition was available to one

1 whose names, symbols, or devices had been appropriated and used by
2 a competitor..." *Seaboard Surety Co.*, 81 Wash.2d at 743 (citing
3 *Whole Grain Wheat Dist. Co. v. Bon Marche*, 154 Wash. 455, 282 P. 914
4 (1929)); accord *Olympia Brewing Co. v. Northwest Brewing Co. et al.*,
5 178 Wash. 533, 538, 35 P.2d 104, 107 (1934) (test to determine unfair
6 competition rests upon whether defendant, as a matter of fact, is by
7 his conduct passing off his goods as plaintiff's goods, or his
8 business as plaintiff's business). Nevertheless, RCW 19.86.020 has
9 been interpreted by Washington courts to "embrace a much larger
10 category of acts" and "benefit a much larger group of competitors"
11 than the common law action. *Seaboard Surety Co.*, 81 Wash.2d at 743.

12 1. *The Applicable Time Period*

13 The parties do not dispute the application of the three-year
14 statute of limitations period for state law claims set forth in RCW
15 4.16.080.¹ Memo in Opposition at 13.

16 2. *Accrual Date*

17 The parties do not dispute applying the discovery rule to
18
19
20

21 ¹ See *Seattle Professional Engineering Employees Assoc. v.*
22 *The Boeing Co.*, 139 Wn.2d 824, 838, 991 P.2d 1126, 1133
23 (2000) (holding claims for unjust enrichment are subject to the
24 three-year statute of limitations provided by RCW 4.16.080(3));
25 *City of Seattle v. Blume*, 134 Wash.2d 243, 251, 947 P.2d 223, 227
26 (1997) (holding that "the limitations period for a cause of action
27 for tortious interference [with a business expectancy] is three
28 years, as specified in RCW 4.16.080(2)"; But see *Most Worshipful*
Prince Hall Grand Lodge of Washington, F. & A.M., et al. v. Most
Worshipful Universal Grand Lodge, A.F. & A.M. of Washington, et.
al., 62 Wash.2d 28, 41, 381 P.2d 130, 139 (1963) (holding RCW
4.16.080 inapplicable to suits alleging unfair competition);
Lightfoot v. MacDonald, 86 Wash.2d 331, 332, 544 P.2d 88, 89
(1976) (holding claims of unfair competition brought under the
Consumer Protection Act to be subject to a 4-year statute of
limitations set forth in RCW 19.86.120).

1 determine the proper accrual date for the state law claims.² Memo in
2 Opposition at 13. Under the discovery rule, the limitations period
3 begins to run "when the plaintiff knew or should have known the
4 essential elements of the cause of action." *Gevaart v. Metco*
5 *Constr., Inc.*, 111 Wash.2d 499, 501, 760 P.2d 348 (1988); *White v.*
6 *Johns-Manville Corp.*, 103 Wash.2d 344, 348, 693 P.2d 687, (1985). In
7 discovering the basis for the cause of action, "the discovery rule
8 requires a plaintiff to use due diligence." *Allen*, 118 Wash.2d at
9 758, 826 P.2d 200 (citing *Reichelt v. Johns-Manville Corp.*, 107
10 Wash.2d 761, 772, 733 P.2d 530 (1987); *White*, 103 Wash.2d at 353-54,
11 693 P.2d 687; *Gevaart*, 111 Wash.2d at 502, 760 P.2d 348.
12 Nevertheless, the discovery rule postpones the accrual date "until
13 the time when a plaintiff, through the exercise of due diligence,
14 should have discovered the basis for a cause of action." *Id.* at 758,
15 826 P.2d 200.

16 Whether or not the plaintiff exercised due diligence in
17 discovering its cause of action is normally a question of fact.
18 *Mayer v. Huesner*, 126 Wash.App. 114, 123, 107 P.3d 152, 157
19 (2005) (citing *Allen*, 118 Wash.2d at 760, 826 P.2d 200). It is true
20 that questions of fact may be decided on summary judgment "if
21 reasonable minds can reach but one conclusion on them." *Allen*, 118
22 Wash.2d at 760, 826 P.2d 200. In the case-at-hand, reasonable minds
23 could differ on whether Directv discovered or should have discovered
24 the basis for its state law claims after merely discovering on
25 December 1, 2001 that the illegal devices had been purchased.
26 Accordingly, Defendant's motion for summary judgment on the state

27
28 ² Because neither party disputes the applicability of the
discovery rule, the Court assumes its applicability. *Allen v.*
State, 118 Wash.2d 753, 758, 826 P.2d 200, 203 (1992).

1 law claims in Counts VI, VII, VIII, and IX are denied.

2 **E. Count X, RCW 9A.56.230**

3 Finally, Defendant Garza seeks summary judgment dismissing
4 Directv's claim under RCW 9A.56.230. In Count X of its Complaint,
5 Directv seeks relief pursuant to RCW 9A.56.230 for Defendant Garza's
6 alleged "[u]nlawful sale of subscription television services," in
7 violation of RCW 9A.56.230(1)(c). Complaint at 17. A person is
8 guilty of violating said subsection if her or she:

9 Manufactures, imports into the state of Washington,
10 distributes, sells, leases, or offers for sale or lease
11 a device, plan or kit for a device designed in whole or
12 in part to receive subscription television services
13 offered for sale by the subscription television service
14 company, regardless of whether the programming or
15 services are encoded, filtered, scrambled, or otherwise
16 made unintelligible.

17 RCW 9A.56.230(1)(c).

18 **1. The Applicable Time Period**

19 The parties do not dispute the application of a three-year
20 statute of limitations period for the state law claims. Memo in
21 Opposition at 13.

22 **2. Accrual Date**

23 For the reasons stated above regarding Counts VI, VII, VIII,
24 and IX, whether Directv discovered, or with due diligence should
25 have discovered, its cause of action under RCW 9A.56.230 after
26 merely learning of purchase and possession is a question of fact on
27 which reasonable minds could differ. Accordingly, Defendant's
28 motion for summary judgment on the statutory state law claim in
Count X is denied.

IV. DOCTRINE OF LACHES

Defendant Garza contends that he is entitled to summary
judgment dismissing Directv's equitable claims as being time-barred

1 by the doctrine of laches. Directv asserts that Defendant Garza's
2 motion should be denied because Defendant Garza can show neither
3 unreasonable delay in filing the suit nor resulting prejudice. Memo
4 in Opposition at 14.

5 1. *Federal Claims*

6 The doctrine of laches provides an equitable time limitation on
7 a claimant's right to file suit. *Boone v. Mechanical Specialties*
8 *Co.*, 609 F.2d 956 (9th Cir. 1979). The defense of laches "requires
9 proof of (1) lack of diligence by the party against whom the defense
10 is asserted, and (2) prejudice to the party asserting the defense."
11 *Bratton v. Bethlehem Steel Corp.*, 649 F.2d 658 (9th Cir.1980) (citing
12 *Costello v. United States*, 365 U.S. 265, 282, 81 S.Ct. 534, 543, 5
13 L.Ed.2d 551 (1961); *Cady v. Morton*, 527 F.2d 786, 792 (9th Cir.
14 1975); *Lathan v. Brinegar*, 506 F.2d 677, 691-92 (9th Cir. 1974) (en
15 banc).

16 In determining the first element, a plaintiff's delay in filing
17 suit is generally deemed reasonable so long as the analogous statute
18 of limitations has not expired. *Gillons v. Shell Co. Of California*,
19 86 F.2d 600, 604 (9th Cir. 1936). Furthermore, "only rarely should
20 laches bar a case before the analogous statute has run." *Thomas*, 329
21 F.Supp.2d at 954 (quoting *Coalition for Gov't Procurement v. Fed.*
22 *Prison Indus., Inc.*, 365 F.3d 435, 466 (6th Cir. 2004)).

23 Because determining lack of diligence and prejudice depends on
24 a close evaluation of all the particular facts, a question of
25 whether the doctrine of laches is applicable to a certain case is
26 seldom resolved in summary judgment. *Couveau v. American Airlines,*
27 *Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000) (citing *Bratton*, 649 F.2d
28 at 666-67). For instance, if a genuine issue of material fact

1 exists regarding when a claimant knew or had reason to know of an
2 actual or impending violation, a grant of summary judgment would be
3 improper because the first element of the laches test could not be
4 established. *Kling v. Hallmark Cards, Inc.*, 225 F.3d 1030, 1042 (9th
5 Cir. 2000). In order to meet the first prong of the doctrine of
6 laches for summary judgment, the record must "support the conclusion
7 that, as a matter of law, a reasonably diligent plaintiff would have
8 discovered the violation." *Id.* Thus, if an issue of fact exists as
9 to when or whether the claimant discovered its cause of action,
10 diligence cannot be decided as a matter of law.

11 As discussed previously, whether Directv had or should have had
12 knowledge of its causes of action after learning of Defendant
13 Garza's purchase presents a question of fact. Therefore, since the
14 Court cannot determine when Directv had notice of its causes of
15 action, it also cannot determine whether Directv was diligent in
16 asserting its claims after such notice. Reasonable minds, at this
17 time, could reach more than one conclusion on the issue of
18 diligence. See *Allen*, 118 Wash.2d at 760, 826 P.2d 200. Thus, it
19 would be inappropriate, based on the current state of the record,
20 for the Court to draw a conclusion as a matter of law.

21 Because the Court concludes that Defendant Garza has not
22 established unreasonable delay as a matter of law, it need not
23 decide at this time whether Garza has established sufficient
24 prejudice to warrant summary judgment. See *Kling*, 225 F.3d at 1042.
25 Accordingly, Defendant's motion for summary judgment on the federal
26 law claims based on the doctrine of laches is denied.

27 2. State Claims

28 Under Washington law, laches is held to be "an extraordinary

1 remedy to prevent injustice and hardship and should not be employed
2 as 'a mere artificial excuse for denying to a litigant that
3 which...he is fairly entitled to receive...' " *Brost v. L.A.N.D.,*
4 *Inc.*, 37 Wash.App. 372, 376, 680 P.2d 453 (1984) (quoting *Crodle v.*
5 *Dodge*, 99 Wash. 121, 131, 168 P. 986 (1917)). Washington common law
6 defines the doctrine of laches as "an implied waiver arising from
7 knowledge of existing conditions and acquiescence in them." *Lopp v.*
8 *Peninsula Sch. Dist. No. 401*, 90 Wash.2d 754, 759, 585 P.2d 801
9 (1978). In order to establish a laches defense, a litigant must
10 prove:

11 [F]irst, knowledge or reasonable opportunity to discover
12 on the part of a potential plaintiff that he has a cause
13 of action against a defendant; second, an unreasonable
14 delay by the plaintiff in commencing that cause of
15 action; and third, damage to the defendant resulting from
16 the unreasonable delay.

17 *Lopp*, 90 Wash.2d at 759, 585 P.2d 801. Each of the factors must be
18 proven, as "none of these elements alone raises the defense of
19 laches." *Id.*

20 As previously concluded on the defense of laches under federal
21 law, whether Directv had "knowledge or reasonable opportunity to
22 discover" its causes of action against Defendant Garza after
23 learning of the purchases on December 1, 2001 presents a question of
24 fact which at this time cannot be determined by the Court on a
25 motion for summary judgment. Accordingly, because the Court cannot
26 determine as a matter of law the first element of the laches test
27 under Washington law, Defendant Garza's motion for summary judgment
28 on the state law claims based on the doctrine of laches is denied.

V. CONCLUSION

For the aforementioned reasons, **IT IS HEREBY ORDERED** that
Defendant's Motion for Summary Judgment (Ct. Rec. 7) is **DENIED**.

1 **IT IS SO ORDERED.**

2 The District Court Executive is directed to file this Order and
3 provide copies to counsel.

4 **DATED** this 16th day of September, 2005.

5
6 ***s/Lonny R. Suko***

7 _____
 LONNY R. SUKO
 UNITED STATES DISTRICT JUDGE